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Rohana bt Ibrahim v Khadijah bt Iskandar

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HIGH COURT (SHAH ALAM) — SUIT NO BA-23NCVC-67–12 OF 2021
ELAINE YAP JC
31 JANUARY 2025

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Tort — Defamation — Libel — Plaintiff sued defendant for defamation over leaked recording of MS Teams meeting — Whether defamatory imputations referred to plaintiff — Whether defamatory imputation were defamatory — Whether defamatory imputations were published — Whether award of damages was due — Defamation Act 1957 s 5

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The plaintiff and the defendant were co-workers at Bank Pertanian Malaysia Bhd ('Agrobank'). The plaintiff sued the defendant for defamation over a leaked recording of an MS Teams meeting between the defendant and the Chief Credit Officer ('CCO') of Agrobank. The defendant was the acting President/Chief Executive Officer ('CPCEO') of Agrobank. The plaintiff's position was Relationship Manager (Deposit Section) for the Ministry of Agriculture and Food Industries and its agencies. On 11 February 2021, the defendant had a work-related MS Teams meeting with the CCO, which was one hour 21 minutes long and it was set up, recorded and saved in the public Teams channel in Agrobank's server by the CCO's secretary. The recording was accessible to all employees of Agrobank. Sometime between 11 February 2021 and 5 March 2021, the full recording of the Teams meeting as well as a six minute and 47 seconds excerpt of it began circulating via WhatsApp as a video file entitled 'Video Konspirasi CPCEO & CCO Agrobank'. The video file was accompanied by #Ana 'Itu macam GRO' and other comments not attributed to the defendant. The offending statements complained of by the plaintiff were uttered by the defendant to the CCO. The plaintiff relied on the innuendo meaning of the offending statements. The defence case was that the offending statements were not defamatory and/or not capable of bearing the pleaded defamatory imputations.

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Held, allowing the claim:

(1) The defendant admitted that she was referring to the plaintiff when she said 'Ana' in the Teams meeting. However, she qualified her concession by saying that people unfamiliar with the plaintiff and outside of Agrobank were unlikely to connect 'Ana' to the plaintiff. The element of identification was satisfied. Non-recognition by the public at large (ie beyond the community of employees at Agrobank and those in the

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industry who dealt with the plaintiff) only went to the extent of damage if defamation was established (see paras 11–12).

(2) In respect of the defamatory imputation that the plaintiff was professionally incapable ('defamatory imputations 1'), the defendant was saying that the plaintiff did not know how to structure products or anything else that a proper Relationship Manager could do and would just refer customer queries to others. The implication was that the plaintiff was not capable of undertaking the expected role of a Relationship Manager. The defendant's words were an indictment of the plaintiff's inadequacy. The offending statements were an expression of the defendant's views about the plaintiff. In expressing those views, the defendant used words that trivialised and ridiculed the plaintiff in her professional role. The defamatory imputations 1 was therefore calculated to excite feelings of ridicule and contempt for the plaintiff and lower her in the estimation of right-thinking members of society generally. This was defamatory (see paras 21 & 23–25).

(3) The defamatory imputations about the plaintiff's moral character ('defamatory imputations 2') was not off the mark. The acronym 'GRO' was capable of being understood to mean 'Guest Relations Officer.' The defendant's explanation that by 'GRO' she meant 'Government Relations Officer' could not be persuaded as, inter alia: (a) there was no such designation in Agrobank; (b) although the defendant claimed that it was a common term in the banking industry, no evidence was led to that effect; and (c) witnesses for the plaintiff whose credibility were not impeached during cross examination, came forward to testify that they understood the term 'GRO' as the pleaded variety. The defamatory imputations 2 from the offending statements were clearly defamatory in their tendency to lower the plaintiff in the estimation of right-thinking members of society. Additionally, the brevity of the statement was not generally a measure of its sting. Something defamatory said in passing, with no legitimate purpose in the overall statement, was no less a defamation (see paras 30–32 & 34–35).

(4) There was no expectation of privacy when employees use office facilities for work. The defendant was carrying on a formal work function when the Teams meeting was conducted. There were also no surreptitious circumstances in the recording of the Teams meeting. The circumstances did not lend credence to the Teams meeting being a 'private discussion'. The saved recording of the Teams meeting was meant to be viewed and it was in fact viewed by employees within Agrobank. There was sufficient legal basis to attribute legal responsibility to the defendant for the publication. In respect of the re-publication, the defendant clearly did not authorize or intend it nor was any viewer of the recording under any duty to republish it. The manner in which the re-publication occurred

pointed to mischief-making by a provocateur and could not be said to be the natural and probable consequence of the publication by the defendant. The chain of causation was broken and thus, there was no sufficient legal basis to attribute legal responsibility to the defendant for the re-publication (see paras 43–47).

(5) An award of damages was due to vindicate the plaintiff for injury to her reputation from the insult of the defamatory imputations 1 and 2 about her capability and moral character. The libel subjected the plaintiff to ridicule and contempt within Agrobank and caused embarrassment and distress. Notwithstanding the limited publication, aggravated damages was awarded to express the court's disapproval for the unapologetic conduct of the defendant. An award of RM30,000 in general and aggravated damages was appropriate (see paras 49 & 51–52).

[Bahasa Malaysia summary

Plaintif dan defendan adalah rakan sekerja di Bank Pertanian Malaysia Bhd ('Agrobank'). Plaintif menyaman defendan atas fitnah berhubung rakaman yang bocor daripada mesyuarat MS Teams antara defendan dan Ketua Pegawai Kredit ('CCO') Agrobank. Defendan adalah pemangku Presiden/Ketua Pegawai Eksekutif ('CPCEO') Agrobank. Jawatan plaintif adalah Pengurus Perhubungan (Bahagian Deposit) bagi Kementerian Pertanian dan Industri Makanan serta agensi-agensinya. Pada 11 Februari 2021, defendan mengadakan mesyuarat MS Teams berkaitan kerja dengan CCO, yang berlangsung selama 1 jam 21 minit dan ia telah disediakan, dirakam dan disimpan dalam saluran Teams awam di pelayan Agrobank oleh setiausaha CCO. Rakaman itu boleh diakses oleh semua pekerja Agrobank. Antara 11 Februari 2021 dan 5 Mac 2021, rakaman penuh mesyuarat Teams serta petikan selama enam minit dan 47 saat daripadanya mula diedarkan melalui WhatsApp sebagai fail video bertajuk 'Video Konspirasi CPCEO & CCO Agrobank'. Fail video itu disertakan dengan #Ana 'Itu macam GRO' dan komen-komen lain yang tidak dikaitkan dengan defendan. Kenyataan menyinggung perasaan yang diadukan oleh plaintif telah diucapkan oleh defendan kepada CCO. Plaintif bergantung pada makna sindiran kenyataan menyinggung perasaan itu. Kes pembelaan adalah bahawa kenyataan menyinggung perasaan itu tidak memfitnah dan/atau tidak mampu membawa tuduhan fitnah yang didakwa.

Diputuskan, membenarkan tuntutan:

(1) Defendan mengakui bahawa dia merujuk kepada plaintif apabila dia berkata 'Ana' dalam mesyuarat Teams tersebut. Walau bagaimanapun, dia mengehadkan pengakuannya dengan menyatakan bahawa orang yang tidak mengenali plaintif dan di luar Agrobank tidak mungkin mengaitkan 'Ana' dengan plaintif. Elemen pengenalan adalah memuaskan. Tidak dikenali oleh orang awam secara amnya (iaitu di luar

komuniti pekerja di Agrobank dan mereka yang dalam industri yang berurusan dengan plaintif) hanya terhad kepada takat ganti rugi jika fitnah terbukti (lihat perenggan 11–12).

(2) Berhubung dengan tuduhan fitnah bahawa plaintif tidak berkebolehan secara profesional ('tuduhan fitnah 1'), defendan mengatakan bahawa plaintif tidak tahu bagaimana untuk menstruktur produk atau apa-apa sahaja yang sepatutnya dilakukan oleh Pengurus Perhubungan yang betul dan hanya akan merujuk pertanyaan pelanggan kepada orang lain. Implikasinya ialah plaintif tidak mampu melaksanakan peranan yang diharapkan sebagai Pengurus Perhubungan. Kata-kata defendan adalah satu dakwaan terhadap kekurangan plaintif. Kenyataan menyinggung perasaan adalah satu ekspresi pandangan defendan tentang plaintif. Dalam meluahkan pandangan tersebut, defendan menggunakan kata-kata yang memperkecil dan mentertawakan plaintif dalam peranan profesionalnya. Oleh itu, tuduhan fitnah 1 dikira untuk membangkitkan perasaan ejekan dan penghinaan terhadap plaintif dan merendahkannya dalam anggaran ahli masyarakat yang berfikiran betul secara amnya. Ini adalah fitnah (lihat perenggan 21 & 23–25).

(3) Tuduhan fitnah tentang watak moral plaintif ('tuduhan fitnah 2') adalah tepat. Akronim 'GRO' mampu difahami sebagai bermaksud 'Pegawai Perhubungan Pelanggan.' Penjelasan defendan bahawa dengan 'GRO' dia bermaksud 'Pegawai Perhubungan Kerajaan' tidak dapat dipertahankan kerana, antara lain: (a) tiada jawatan sedemikian di Agrobank; (b) walaupun defendan mendakwa bahawa ia adalah istilah biasa dalam industri perbankan, tiada bukti dikemukakan untuk kesan itu; dan (c) saksi untuk plaintif yang kredibilitinya tidak dicabar semasa pemeriksaan balas, tampil untuk memberi keterangan bahawa mereka memahami istilah 'GRO' seperti yang didakwa. Tuduhan fitnah 2 daripada kenyataan menyinggung perasaan jelas memfitnah dalam kecenderungan mereka untuk merendahkan plaintif dalam anggaran ahli masyarakat yang berfikiran betul. Tambahan pula, keringkasan kenyataan itu secara amnya bukanlah ukuran sengatan. Sesuatu yang memfitnah yang dikatakan secara sepintas lalu, tanpa tujuan yang sah dalam kenyataan keseluruhan, tidak kurang sebagai fitnah (lihat perenggan 30–32 & 34–35).

(4) Tidak ada jangkaan privasi apabila pekerja menggunakan kemudahan pejabat untuk kerja. Defendan menjalankan fungsi kerja rasmi apabila mesyuarat Teams dijalankan. Juga tiada keadaan rahsia dalam rakaman mesyuarat Teams. Keadaan tidak memberi kepercayaan kepada mesyuarat Teams sebagai 'perbincangan peribadi'. Rakaman mesyuarat Teams yang disimpan adalah bertujuan untuk dilihat dan ia sebenarnya dilihat oleh pekerja di dalam Agrobank. Terdapat asas undang-undang yang mencukupi untuk mengaitkan tanggungjawab undang-undang

kepada defendan untuk penerbitan tersebut. Berhubung dengan penerbitan semula, defendan jelas tidak membenarkan atau berniat untuk membenarkannya dan tidak ada penonton rakaman di bawah sebarang kewajipan untuk menerbitkannya semula. Cara penerbitan semula itu berlaku menunjukkan kepada perbuatan jahat oleh provokator dan tidak boleh dikatakan sebagai akibat semula jadi dan mungkin bagi penerbitan oleh defendan. Rantaian sebab musabab telah terputus dan oleh itu, tidak terdapat asas undang-undang yang mencukupi untuk mengaitkan tanggungjawab undang-undang kepada defendan untuk penerbitan semula (lihat perenggan 43–47).

(5) Award ganti rugi adalah wajar untuk membela plaintif atas kecederaan reputasinya daripada penghinaan tuduhan fitnah 1 dan 2 tentang keupayaan dan watak moralnya. Fitnah itu menyebabkan plaintif diejek dan dihina di dalam Agrobank dan menyebabkan rasa malu dan tertekan. Walaupun penerbitan terhad, ganti rugi teruk telah diberikan untuk menyatakan ketidaksetujuan mahkamah terhadap kelakuan defendan yang tidak menyesal. Award RM30,000 dalam ganti rugi am dan teruk adalah sesuai (lihat perenggan 49 & 51–52).]

Cases referred to

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ 152, HC (refd)

Dato' Seri Tiong King Sing v Datuk Justine Jinggut [2003] 6 MLJ 433, HC (refd)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577; [2021] 4 CLJ 327, FC (refd)

Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor [2017] 6 MLJ 133; [2018] 1 CLJ 145, FC (folld)

Jeyaretnam Joshua Benjamin v Lee Kuan Yew [1992] 2 SLR 310, CA (refd)

Lim Guan Eng v Ruslan bin Kassim and another appeal [2021] 2 MLJ 514; [2021] 4 CLJ 155, FC (refd)

Mohamed Hafiz Mohamed Nordin v Eric Paulsen and another appeal [2019] 1 MLJ 580, CA (refd)

Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 3 CLJ 729, FC (refd)

Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 (refd)

Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Defamation Act 1957 s 5

Chang Carrie (Nazri Aziz Masura Mak & Tan) for the plaintiff.
Deepak Mahadevan (with Faeza Suraya Roselan) (Azmi Fadzly Maha & Sim) for the defendant.

Elaine Yap JC:

INTRODUCTION

[1] The plaintiff and the defendant were co-workers at Bank Pertanian Malaysia Bhd ('Agrobank'). The plaintiff sued the defendant for defamation over a leaked recording of an MS Teams meeting between the defendant and the Chief Credit Officer ('CCO') of Agrobank. The defendant was at the material time, the acting President/Chief Executive Officer ('CPCEO') of Agrobank.

[2] The plaintiff alleged that words uttered by the defendant in the said meeting were uttered with malice and were capable of bearing defamatory imputations about the plaintiff's professional capability and moral character. The defendant denied this and the suit went to trial.

BACKGROUND FACTS

[3] The plaintiff had been an employee at Agrobank since 1 October 1992. Her position at the time of the alleged defamation was Relationship Manager (Deposit Section) for the Ministry of Agriculture and Food Industries and its agencies.

[4] On 11 February 2021, the defendant had a work-related MS Teams meeting with the CCO, Zurina Othman ('SD1') ('Teams meeting'). The Teams meeting was one hour 21 minutes long and it was set up, recorded and saved in the public Teams channel in Agrobank's server by the CCO's secretary. This meant that the recording was accessible to all employees of Agrobank.

[5] Sometime between 11 February 2021 and 5 March 2021, the full recording of the Teams meeting as well as a six minute 47 second excerpt of it began circulating via WhatsApp as a video file entitled 'Video Konspirasi CPCEO & CCO Agrobank'. The video file was accompanied by #Ana 'Itu macam GRO' and other comments not attributed to the defendant.

[6] The video leak came to the attention of management at Agrobank on or about 5 March 2021. It was investigated internally by Agrobank and an

Internal Audit Division report on the information leak was prepared in April 2021 ('audit report'). A

ISSUES FOR DETERMINATION

[7] The offending statements complained of by the plaintiff were transcribed and reproduced in the statement of claim. They were as follows ('offending statements'): B

> Khadijah Iskandar: Yang Ana hari tu la ... *Ana tu mana faham. Pasal ohh apa itu. Out check purchase apa semua. Segala benda dia tidak bleh. Dia tahu, senggel-senggel, gongol-gongol orang. Nak deposit nak deposit ... haa, itu je*. C
>
> Zurina Othman: Ummmm ... dia jaga deposit jer.
>
> Khadijah Iskandar: Aaa ... tapi bagi I, bagi Sharil, aaah itulah Relationship person kita ... Kalau diorang nak apa-apa. Dia bagitau kita. Ada pulak ,,, D
>
> Zurina Othman: Ummmmmm
>
> Khadijah Iskandar: *Itu macam GRO*
>
> Zurina Othman: Ketawa ... Owhhhh ... Kita ada dua jer la kat korporat.

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[8] The offending statements when uttered to the CCO is possible slander, actionable under s 5 of the Defamation Act 1957. Since the offending statements were also published in permanent form in a recording, it is also a possible libel. F

[9] The plaintiff relies on the innuendo meaning of the offending statements. The defence case is that the offending statements are not defamatory and/or not capable of bearing the pleaded defamatory imputations. G

[10] As the defendant did not plead any positive defences to the claim in this case, the only issues for determination are whether the legal elements of the cause of action are established. Per *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ 152, the burden of proof lies on the plaintiff to show that the defamatory imputations: (a) are defamatory; (b) refer to the plaintiff; and (c) were published. H

ANALYSIS AND FINDINGS I

Identification of the plaintiff

[11] The defendant admitted that she was referring to the plaintiff when she said 'Ana' in the Teams meeting. However, she qualified her concession by

saying that people unfamiliar with the plaintiff and outside of Agrobank are unlikely to connect 'Ana' to the plaintiff.

[12] This court finds that the element of identification is satisfied. Non-recognition by the public at large (ie beyond the community of employees at Agrobank and those in the industry who dealt with the plaintiff) only goes to the extent of damage if defamation is established.

[13] It is not in dispute that the video of the Teams meeting was viewed within Agrobank. According to the audit report, it was viewed by 24 staffs on the public channel of MS Teams itself between 11 February 2021 and 4 March 2021, and an unspecified number of people including the Chairman and Board members of Agrobank, received and presumably viewed the video via WhatsApp.

Defamatory imputations

[14] As mentioned in the opening paragraphs of this judgment, the plaintiff contends that the offending statements are capable of bearing the pleaded defamatory imputations about her professional capability and moral character. The defendant contends that they are not capable of being understood as such.

[15] The proper approach to determine if the words complained of are capable of bearing a defamatory meaning is as explained in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393:

> ... to consider the meaning such words would convey to ordinary reasonable persons using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extends to any references or implication from which persons can reasonably draw.

[16] The Court of Appeal in *Mohamed Hafiz Mohamed Nordin v Eric Paulsen and another appeal* [2019] 1 MLJ 580 referring to *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 where LP Thean J, succinctly explained:

> [21] ... In determining the natural and ordinary meaning of the words complained of, the sense or meaning intended by the appellant is irrelevant. Nor for such purpose is the sense or meaning in which the words were understood by the respondent relevant. Nor is extrinsic evidence admissible in construing the words. The meaning must be gathered from the words themselves and in the context of the entire speech made by the appellant on that occasion ...

[17] The test for whether a statement is defamatory is thus an objective one, independent of the subjective state of mind of the author or the specific audience to whom it was published.

[18] Further, the offending words must be considered in the context of the whole article and not simply on isolated passages. Per *Gatley on Libel & Slander* (12th Ed) at para 3.31:

> It follows from the fact that the context and circumstances of the publication must be taken into account, that the claimant cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting. In this regard, the reasonable reader is assumed to have read the whole article complained of. If 'in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together'.

[19] It is also accepted that a statement may be capable of conveying a defamatory meaning but, it may or may not be defamatory in fact, depending on the circumstances in which they were published. *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729:

> [38] The test involved in determining whether or not the words complained of are defamatory is a two-stage process. Firstly, it must be considered what meaning the words would convey to an ordinary person; and secondly, it must be considered whether under the circumstances in which the words were published, a reasonable man would be likely to understand that in a defamatory way (see: *Wong Yoke Kong & Ors v Azmi M Anshar & Ors* [2003] 4 MLJ 96; [2003] 6 CLJ 559).

[20] The generally accepted textbook definition of what is defamatory can be taken from *Gatley on Libel and Slander* as cited in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 ('Syed Husin'):

> There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend 'to lower the plaintiff in the estimation of right thinking members of society generally', 'to cut him off from society' or 'to expose him to hatred, contempt or ridicule', is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published.

Professional capability

[21] In respect of the defamatory imputation that the plaintiff was professionally incapable, the offending statements in question in the context in which it appears is as set out earlier in this judgment. The pleaded defamatory imputations are as follows ('defamatory imputations 1'):

> (a) Bahawa Plaintif adalah tidak berkeupayaan untuk melaksanakan tugasnya sebagai *Relationship Manager* Agrobank;
>
> (b) Bahawa Plaintif adalah bukan orang yang sesuai untuk menjalankan tugas sebagai *Relationship Manager* Agrobank;

[22] From the transcript of the Teams meeting, the discussion between the defendant and the CCO concerned Agrobank's new business model which apparently entailed building relationships with corporates, handling spillover business and creating vendor development programs. In that context, the capabilities of the plaintiff as a Relationship Manager was raised.

[23] The existing function of the plaintiff as Relationship Manager was said to be focused on getting customers to place deposits with Agrobank. By her words, the defendant was saying that the plaintiff did not know how to structure products or anything else that a proper Relationship Manager could do, and would just refer customer queries to others. The defendant appeared to be astonished when she said this.

[24] The implication is that the plaintiff was not capable of undertaking the expected role of a Relationship Manager. The defendant's words were an indictment of the plaintiff's inadequacy. Justification of the defamatory imputations 1 was not pleaded or proved. Regardless of whether the plaintiff's shortcomings are true, this court considers that the offending statements are capable of being understood in the manner pleaded.

[25] Read as a whole, the offending statements were an expression of the defendant's views about the plaintiff. In expressing those views, the defendant used words that trivialised and ridiculed the plaintiff in her professional role. The defamatory imputations 1 were therefore calculated to excite feelings of ridicule and contempt for the plaintiff and lower her in the estimation of right-thinking members of society generally. This is defamatory.

Moral character

[26] The defamatory imputations about the plaintiff's moral character from the offending statements by the defendant are pleaded as follows ('defamatory imputations 2'):

> (c) Bahawa Plaintif adalah seorang 'GRO' yang berkelakuan seperti pelacur atau pekerja seks untuk mendapatkan deposit untuk Agrobank;
>
> (d) Bahawa Plaintif adalah seorang yang rendah akhlaknya dan tidak bereputasi serta sanggup mengorbankan maruah sendiri untuk mendapatkan perniagaan;
>
> (e) Bahawa Plaintif adalah seorang yang terlibat dalam aktiviti seksual luar nikah dan tidak layak digelar Muslimah.

[27] In assessing whether the offending statements were capable of bearing the defamatory imputations 2, the court disregarded the accompanying comments in the WhatsApp circulation of the video file, but considered the offending statements in the context of the discussion in the Teams meeting.

[28] However, it must be assumed that viewers watched the video they received in full, even if their interest might have only been piqued by the file name and comments, in the same way a newspaper headline might. Per *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577; [2021] 4 CLJ 327 ('Mohamed Salleh'):

> [34] On our part, we would much prefer to accept the view in *Charleston* that the publication must be taken to have been viewed as a whole especially when considering whether any sting contained in the headlines, for example, has been neutralised by the context when viewed as a whole. We are nevertheless prepared to accept that in an exceptional case, where the particular facts and circumstances so warrant, the impugned material may be defamatory when viewed in isolation. A lot, we think, depends on the way new technology is being used to mislead viewers intentionally by some media either for the sake of sensationalism to deepen their pockets or to promote some insidious agenda by their backers. It cannot be right and just that there be no remedy in such a case.

[29] The Federal Court held in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514; [2021] 4 CLJ 155 held as follows:

> [87] The defamatory nature of the imputation is to be judged by the ordinary and reasonable members of the community or an appreciable and reputable section of the community (see *Jones v Skelton* [1963] 3 All ER 952*; Peak v Tribune Co* [1909] 214 US 185*; Hepburn v TCN Channel Nine Pty* [1983] 2 NSWLR 682). The ordinary person has been held to be one of fair average intelligence (see *Slayter v Daily Telegraph Newspaper Co Ltd* [1908] 6 CLR 1, who is not avid for scandal (see *Lewis v Daily Telegraph Ltd* [1964] AC 234) but who may engage in some degree of loose thinking (see *Morgan v Odhams Press Ltd* [1971] 2 All ER 1156) and reading between the lines (see *Farquhar v Bottom* [1980] 2 NSWLR 374), but who, at the same time, should not be unduly suspicious (see *Keogh v Incorporated Dental Hospital of Ireland* [1910] 2 IR 577).

[30] This court finds itself agreeing with the plaintiff that the defamatory imputation 2 was not off the mark. The acronym 'GRO' was capable of being understood to mean 'Guest Relations Officer.' 'GRO' is a term associated colloquially with women working in entertainment venues such as night clubs and lounges, whose role is to entertain patrons, often with a suggestive connotation.

[31] The pleaded innuendo was why SD1 was observed to have chuckled (as she put it) in the video recording of the Teams meeting when she heard it and why the video generated interest.

[32] The defendant explained that by 'GRO' she meant 'Government Relations Officer' and was supported by SD1 who also claimed to have understood 'GRO' as 'Government Relations Officer.' This court is not

persuaded by the defendant's attempt to explain her use of the term 'GRO' in the context of the discussion with SD1 about the plaintiff for these reasons:

(a) there was no such designation in Agrobank;

(b) although the defendant claimed that it is a common term in the banking industry, no evidence was led to that effect;

(c) the explanation also appeared wholly incongruous with the fact that SD1 chuckled when she heard the defendant use the term 'GRO' in the Teams meeting;

(d) the hashtag created by viewers of the video: '#Ana. Itu macam GRO' was consistent with the impression created by the defendant's words; and

(e) witnesses for the plaintiff whose credibility were not impeached during cross examination, came forward to testify that they understood the term 'GRO' as the pleaded variety.

[33] The defendant also attempted to explain that she did not say that the plaintiff was a GRO, but likened her job scope to one. This court does not see how this helps the defence case whether the plaintiff is referred to as a GRO or had her job likened to that of a GRO.

[34] Per *Syed Hussin* the defamatory imputations 2 from the offending statements were clearly defamatory in their tendency to lower the plaintiff in the estimation of right thinking members of society. There is no pleaded antidote to the sting of the defamation. Even if no one believed the imputations to be true of the plaintiff, this does not remove the sting of the defamation.

[35] As a general observation, one of the arguments by the defence is that the snippet of the entire Teams meeting that mentions the plaintiff is only very short (six minutes 47 seconds from an hour 21 minute video). In this regard, this court finds that the brevity of the statement is not generally a measure of its sting. Something defamatory said in passing, with no legitimate purpose in the overall statement, is no less a defamation.

[36] That said, cases like *Mohamed Salleh* explained that impugned statements must not be take in isolation and a holistic approach applied to determine if the sting of the defamation was ameliorated by the 'antidote' contained in the rest of the statement.

[37] In this case, the defendant and the CCO admittedly moved on after the sting of the defamatory imputations 2 was delivered and elicited a chuckle. However, there was also nothing else said that mitigated its effect. There was

nothing in other parts of the Teams meeting that 'throw a different light' on the plaintiffs apparent incapability as a Relationship Manager and the likening her or of her job to that of a 'GRO'.

Publication by the defendant

[38] The defendant admitted that she uttered the offending statements attributed to her in the Teams meeting. However, the defendant denied publishing the offending statements to anyone else but the CCO.

[39] There are two ways in which the offending statements came to be widely published in this case:

(a) when the Teams meeting was recorded by the CCO's secretary and saved on the public channel with access by all employees of Agrobank ('publication'); and

(b) when unknown person or persons leaked the video recording via WhatsApp to the broader public ('re-publication').

[40] The burden of proof was on the plaintiff to also establish that the defendant was responsible for the publication and the re-publication of the offending statements. In *Dato' Seri Tiong King Sing v Datuk Justine Jinggut* [2003] 6 MLJ 433, it was explained that an unauthorised repetition of a libel is *novus actus interveniens* which broke the chain of causation, with the following exception, ie the defendant is liable for the republication or for the damage caused by it:

(a) where she authorised or intended the republication;

(b) where the person to whom the original publication was made was under a duty to repeat the statement; and

(c) where the republication was, in the circumstances of the case, *the natural and probable result of the original publication*.

[41] The plaintiff sought to prove through circumstantial evidence that the publication and republication were the natural and probable result of original publication of the offending statements ie:

(a) the defendant knew or ought to have known that the Teams meeting would be recorded and saved in Agrobank's servers; and

(b) according to the audit report, it was the norm for the CCO's office to organise and record meetings in the public channel.

[42] The defendant argued that Agrobank's Information Technology Department ('ITD') had issued a guideline on 27 October 2020 to advise staff

to use the private Teams channel for meetings and/or discussions. However, ITD records also show that this advice was not understood as an instruction or direction. The employees did not appear to be aware of the existence of the ITD email.

[43] There was no prohibition against the use of the public Teams channel and it was in fact the norm to use it. These were objective facts established by the audit report. To this court however, this is besides the point. There is no expectation of privacy when employees use office facilities for work. The defendant was carrying on a formal work function when the Teams meeting was conducted.

[44] There were also no surreptitious circumstances in the recording of the Teams meeting. The defendant was aware that it was being recorded and either knew or ought to have known from past experience that such recordings would be saved somewhere in Agrobank's server by the CCO's assistant who set up the meeting and was initially present.

[45] The circumstances did not lend credence to the Teams meeting being a 'private discussion'. The onus was on the defendant to conduct her 'private discussions' in circumstances that accorded it the necessary safeguards for an occasion warranting privacy. In this case, this court finds that the natural and probable consequence of recording and saving the Teams meeting was for future reference.

[46] In other words, the saved recording of the Teams meeting was meant to be viewed and it was in fact viewed by employees within Agrobank. There are any number of legitimate reasons why an employee of Agrobank might access the cache of saved video recordings of meetings. This court finds that there is sufficient legal basis to attribute legal responsibility to the defendant for the publication.

[47] In respect of the re-publication, the defendant clearly did not authorise or intend it nor was any viewer of the recording under any duty to republish it. The manner in which the re-publication occurred pointed to mischief-making by a provocateur and cannot be said to be the natural and probable consequence of the publication by the defendant. The chain of causation was broken here and thus, there is no sufficient legal basis to attribute legal responsibility to the defendant for the re-publication.

REMEDIES

[48] Libel is actionable per se, so the plaintiff is not required to show any actual damage. The quantum of recoverable damages are also at large, guided

only by precedents with similar factors. In *Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor* [2017] 6 MLJ 133; [2018] 1 CLJ 145, the Federal Court cited *Defamation Law, Procedure & Practice* by Price & Duodu (3rd Ed, para 20–04 at p 208) on the several factors that a court must take into account in assessing compensatory damages:

> The amount of damages awarded in respect of vindication and injury to reputation and feelings depends on a number of factors:
>
> 1. The gravity of the allegation.
> 2. The size and influence of the circulation.
> 3. The effect of the publication.
> 4. The extent and nature of the claimant's reputation.
> 5. The behaviour of the defendant.
> 6. The behaviour of the claimant.
>
> This list is most helpful. But it must be borne in mind that this is not by any means exhaustive of the matters which the court may take into account when making an assessment.

[49] In this case, an award of damages is due to vindicate the plaintiff for injury to her reputation from the insult of the defamatory imputations 1 and 2 about her capability and moral character. The libel subjected the plaintiff to ridicule and contempt within Agrobank and caused embarrassment and distress. However, the quantum is limited by the size and influence of the circulation that the defendant is legally responsible for.

[50] The offending statements initially communicated by the defendant to the CCO and the subsequent publication of the recording of the Teams meeting on the Agrobank server were a contained publication that may not have seen the light of day but for the re-publication. Whatever the impetus for the 24 employees in Agrobank to access the recording published on Agrobank's public channel before it was taken down, it was nevertheless accessed and viewed.

[51] Notwithstanding the limited publication, this court awards aggravated damages to express the court's disapproval for the unapologetic conduct of the defendant and the manufactured defence advanced by her at the trial that by GRO, she meant to refer to the plaintiff as a 'Government Relations Officer' or that she only likened the plaintiff's function and not the plaintiff herself, to that of a 'Guest Relations Officer'. These defences were mutually contradictory and not in the least believable.

[52] Considering the factors, an award of RM30,000 in general and aggravated damages is appropriate. The other reliefs sought are not justified and are denied. There is no evidence of any risk that the defendant would repeat the offending statements and considering the extent of the publication for which the defendant is legally responsible, the plaintiff's demand for the publication of an apology would do more harm in re-agitating an issue that should be put to rest.

CONCLUSION

[53] In summary and conclusion, the plaintiff's claim is allowed. The prayers allowed by the court are as follows:

(a) general and aggravated damages in the sum of RM30,000;

(b) interest at 5%pa from the date of the writ until full payment; and

(c) costs in the sum RM25,000.

Claim allowed.

Reported by Nabilah Syahida Abdullah Salleh